

FILE COPY

FILED
AUG 27 1948

CHARLES ELMORE CHAPLEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1948.

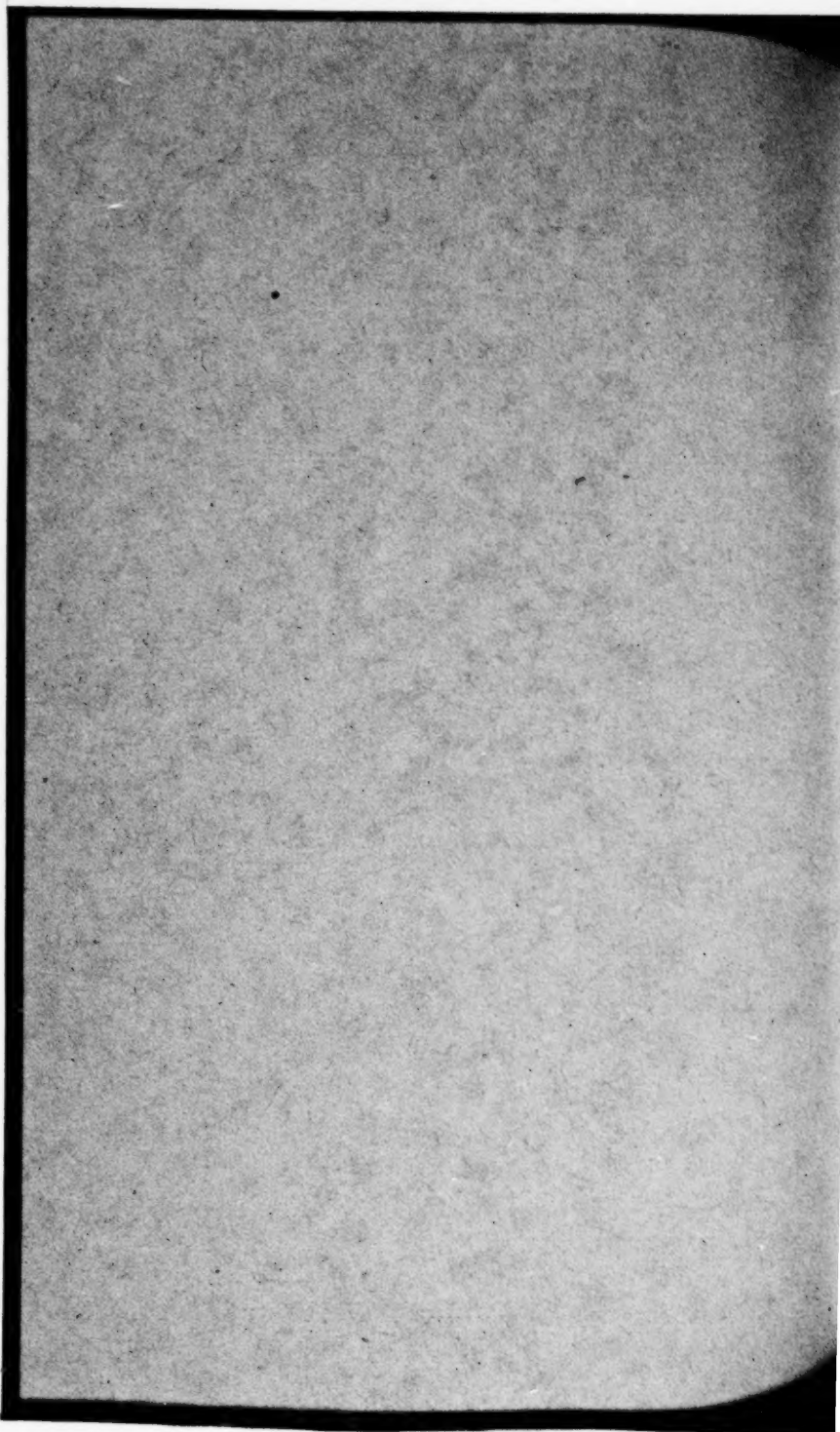
No. 248

THE WM. SCHLUDERBERG-T. J. KURDLE Co., *Petitioner,*

v.

RECONSTRUCTION FINANCE CORPORATION.

PETITION FOR WRIT OF HABEAS CORPUS TO THE
UNITED STATES SUPREME COURT OF AP-
PEALS.



INDEX.

	Page
Opinion below	1
Jurisdiction	2
Question presented	2
Statutes involved	2
Statement	4
Specifications of errors to be urged	11
Reasons for granting the writ	12
Conclusion	18

CITATIONS.

CASES:

Calder v. Henderson, 54 Fed. 802	17
Federal Crop Ins. Corp. v. Merrill, 92 L. Ed. Adv. Ops. 51, 54	16
Lynch v. United States, 292 U. S. 571	16
Salt Co. v. East Saginaw, 80 U. S. 373	17
Swift & Co. v. Reconstruction Finance Corporation, No. 470973, U. S. District Court, decided May 21, 1948 (See Appendix B)	20
United States v. Bethlehem Steel Corp., 315 U. S. 289	16
United States v. Felin & Co., U. S. Supreme Court, No. 17, decided June 14, 1948	9

STATUTES:

Emergency Price Control Act of 1942, approved January 30, 1942, c. 26, Title I, Sec. 2, 56 Stat. 24 (50 U. S. C., App. 902(e)); c. 26, Title II, Sec. 204, 56 Stat. 31 (50 U. S. C., App. 924; Price Con- trol Extension Act of 1946, approved July 25, 1946, c. 671, Sec. 6, 60 Stat. 671 (15 U. S. C. 713 note)	2, 3, 7, 15
---	-------------

APPENDICES:

Appendix A —Reconstruction Finance Corporation Regulation No. 10, Livestock Slaughter Payments	19
Appendix B —Decision of U. S. District Court in Swift & Company v. Reconstruction Finance Corp., decided May 21, 1948	20

IN THE
Supreme Court of the United States

OCTOBER TERM, 1948.

No.

THE WM. SCHLUDERBERG-T. J. KURDLE Co., *Petitioner,*

v.

RECONSTRUCTION FINANCE CORPORATION.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES EMERGENCY COURT OF AP-
PEALS.**

*To the Honorable, the Chief Justice of the United States,
and the Associate Justices of the Supreme Court of
the United States:*

Your petitioner, The Wm. Schluderberg-T. J. Kurdle Co., a corporation, petitions this Court for a writ of certiorari to review a judgment of the United States Emergency Court of Appeals dismissing petitioner's complaint there, and in support of this petition respectfully shows:

OPINION BELOW.

The opinion of the Emergency Court of Appeals, as yet unreported, appears in the record at pages 62-70.

JURISDICTION.

The judgment of the Emergency Court of Appeals was entered on July 29, 1948 (R. 71). The jurisdiction of this Court is invoked under the provisions of Section 204(d) of the Emergency Price Control Act of 1942, 56 Stat. 31, 50 U. S. C. App. Sec. 924(d).

QUESTIONS PRESENTED

1. Were the livestock slaughter subsidy regulations of Reconstruction Finance Corporation (issued under direction of the Office of Economic Stabilization and the Federal Loan Administrator) unlawful in providing a production subsidy in stated amounts per cwt. on the liveweight of livestock slaughtered during the period September 1, 1946, through October 14, 1946, to the extent that slaughterers had on hand at the termination of price control (12:01 a. m., October 15, 1946) some part of the meat obtained from such slaughter?

2. If the said subsidy regulations and the terms and conditions thereof were lawful as issued and published, may Reconstruction Finance Corporation retroactively revoke by mere announcement obligations provided in published regulations which it validly assumed and upon which petitioner relied?

STATUTES INVOLVED.

The pertinent portion of the Emergency Price Control Act of 1942, approved January 30, 1942, c. 26, Title I, Sec. 2, 56 Stat. 24 (50 U. S. C., App. 902(e)), provides as follows:

“Whenever the Administrator determines that the maximum necessary production of any commodity is not being obtained or may not be obtained during the ensuing year, he may, on behalf of the United States,

* * * make subsidy payments to domestic producers of such commodity in such amounts and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof: *Provided*, That in the case of any commodity which has heretofore or may hereafter be defined as a strategic or critical material by the President pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, such determinations shall be made by the Federal Loan Administrator, with the approval of the President, * * * and such subsidy payments to domestic producers thereof may be paid, only by corporations created or organized pursuant to such section 5d; * * *

The pertinent portion of the Price Control Extension Act of 1946, approved July 25, 1946, c. 671, Sec. 6, 60 Stat. 671 (15 U. S. C. 713 note) provides as follows:

"Payments and purchases may be made with respect to operations for the fiscal year ending June 30, 1947, which involve subsidies and anticipated losses as follows:

* * *

"(4) With respect to noncrop programs, 1946 crop program operations and the 1947 crop program operations relating to sugar, flour, petroleum, petroleum products, and other domestic and imported materials and commodities, \$869,000,000: *Provided*, That the operations authorized under this subparagraph (4) shall be progressively reduced, shall be terminated not later than April 1, 1947, and shall not cost more than \$629,000,000 during the last six months of the calendar year 1946. Operations shall not be carried out under authority of this subparagraph (4) with respect to any commodity for any period occurring after the date of the enactment of this Act during which maximum prices on such commodity are not in effect under the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended * * *."

STATEMENT.

During the period of price control a production subsidy for livestock slaughter was provided in published regulations of Reconstruction Finance Corporation or its subsidiary Defense Supplies Corporation. During the period September 1, 1946 through October 14, 1946, such payments to slaughterers were provided by Regulation No. 10 of Reconstruction Finance Corporation. This regulation provided that "Reconstruction Finance Corporation shall make payments to eligible slaughterers on cattle, calves, hogs and pigs slaughtered on and after September 1, 1946, in accordance with all the terms and conditions of Livestock Slaughter Payments, Revised Regulation No. 3," as amended, the provisions of which were incorporated by reference. (R. 65, 10 F. R. 4241)* Revised Regulation No. 3 stated the amounts per cwt. of liveweight which would be paid for the slaughter of each species of livestock. This regulation carried the following termination provision to the effect that the slaughter subsidy would be paid on all *slaughter performed* "on or before the date of termination"—

"Section 7003.12—*Termination.* This regulation may be terminated at any time after ten (10) days notice. Such termination shall not preclude the filing of applications on account of *livestock slaughtered on or before the date of termination* for which the applicant would otherwise have been eligible. Such applications must be filed within thirty (30) days after date of termination." (Emphasis supplied)

Regulation No. 10, in adopting and continuing Regulation No. 3, carried forward this termination provision with the following addition:

"Section 7010.3. This regulation shall terminate automatically, without regard to the ten day notice provision of Section 7003.12 of Revised Regulation No.

* Regulation No. 10 is set forth as Appendix A hereof.

3, on the failure of any condition required by law as a prerequisite to validity of a subsidy on livestock or meat."

Price control of livestock and meat was finally terminated by the President effective 12:01 a. m., October 15, 1946. On March 31, 1947, five and one-half months after such termination, Reconstruction Finance Corporation issued its Announcement No. 1 stating that it would "recapture" from "large slaughterers" sums paid under its regulations for slaughter during the period September 1 through October 14, 1946, to the extent that such slaughterers had on hand at the termination of price control some part of the meat derived from such slaughter. (R. 30) The announcement defined "large slaughterers" as those who slaughtered "in excess of 500,000 pounds total liveweight of cattle, calves and hogs combined during the period consisting of the May, June and September 1946 accounting periods." As to slaughterers who slaughtered less than this amount, the announcement stated that "because of the disproportionate administrative burden in relation to the potential amounts involved, the Government will not attempt to recapture such subsidies." The announcement concluded with the following paragraph (R. 31):

"With respect to all slaughterers, large or small, who have already received the September-October subsidy, if their cases are not settled pursuant to the procedures provided herein, they will be referred to the Department of Justice."

The announcement stated that "large slaughterers" would be furnished with a form for reporting their inventories and for determining the amounts to be recaptured. Petitioner is engaged in the slaughtering of cattle, calves and hogs and in the general meat packing business at Baltimore, Md. It slaughtered in excess of 500,000 pounds of cattle, calves and hogs during the May-June-September, 1946 accounting periods and subsequently it received from

Reconstruction Finance Corporation Form No. DSC-118, entitled "Report of Inventory of Meat and Meat Products as of 12:01 a. m., October 15, 1946, and Computation of Net Livestock Slaughter Payments." (R. 10) This form called for the actual inventory of fresh meat, processed meats, and all meat products as of 12:01 a. m., October 15, 1946, or for a calculated inventory as of that time. The form and accompanying instructions provided formulae and methods of arithmetical computation to be used in converting the fresh, processed and various meat products on hand into calculated live animal weights. On basis of such calculated live animal weights, the livestock slaughter payments under Regulation No. 10 were applied and an amount to be recaptured was arrived at. (R. 31-45)

Form No. DSC-118 served upon petitioner provided that failure to file the required information within the time allowed would "constitute election to forfeit all subsidy payments for September and October, 1946." (R. 10) In order to avoid the risk of losing its entire subsidy for the accounting periods in September and October, 1946, and in compliance with the demands and requirements of Reconstruction Finance Corporation petitioner prepared its report on Form No. DSC-118 and, in accordance with instructions, filed it within the time specified. Under the computations and calculations required by the form and the instructions, the sum of \$16,161.75 was arrived at as the amount to be recaptured from petitioner. (R. 11)

After October 14, 1946, and prior to January, 1947, the subsidy claims of many slaughterers for slaughter performed during the period September 1 through October 14, 1946, were fully paid by Reconstruction Finance Corporation in accordance with the terms and conditions of its Regulations Nos. 10 and 3. (R. 16) Payment of petitioner's claims was not made until after March 31, 1947, and after petitioner had filed the information required by Form No. DSC-118. In making payment to petitioner Reconstruction Finance Corporation recaptured and withheld from pe-

petitioner's slaughter claims, computed in accordance with the terms and conditions of Regulations Nos. 10 and 3, the amount of \$16,161.75 calculated on Form No. DSC-118. (R. 11)

The ruling and action of Reconstruction Finance Corporation and its Announcement No. 1 were formally protested by petitioner in protest filed with Reconstruction Finance Corporation under date of October 6, 1947. (R. 27) The protest was denied by the Directors of that corporation under date of November 4, 1947. (R. 27) Petitioner's complaint appealing from denial of protest was filed with the Emergency Court under Section 204(a) of the Emergency Price Control Act of 1942, c. 26, Title II, Sec. 204, 56 Stat. 31, 50 U. S. C. App. 924, on December 1, 1947. (R. 47)

The Emergency Court ruled that the livestock slaughter subsidy regulations of Reconstruction Finance Corporation Nos. 10 and 3 were unlawful in providing payments for slaughter performed while price controls were in effect to the extent that slaughterers had on hand some meat derived therefrom when price controls were removed. On basis of this ruling it upheld the deduction made by Reconstruction Finance Corporation from petitioner's claim under Regulations Nos. 10 and 3 and entered judgment dismissing the complaint.

Petitioner contended that Regulations Nos. 10 and 3 and the terms and conditions thereof were valid and within the lawful discretion of the Federal Loan Administrator and the President acting through the Office of Economic Stabilization.* Section 2(e) of the Emergency Price Control Act authorized the Federal Loan Administrator, "with the approval of the President", to provide "production" subsidies for any commodity declared to be strategic or critical and to "make subsidy payments to domestic producers of such commodity in such amounts and in such manner

* The President by Executive Order 9250 delegated to the Economic Stabilization Director his powers over subsidies. (7 F. R. 7871)

and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof", such subsidy payments to be made by Reconstruction Finance Corporation or its subsidiaries. Petitioner further contended that the regulations having been validly issued, a vested right arose in petitioner to payment of the subsidy upon compliance with the terms and conditions provided in the published regulations and that Reconstruction Finance Corporation could not subsequently revoke retroactively by mere announcement valid obligations lawfully assumed upon which petitioner had relied. The rationale of the court below was (1) that the subsidy payments, while in form upon the slaughter performed, were in substance a payment to slaughterers to compensate them for the low level of maximum selling prices maintained on meat and meat products under the Price Control Act and were, therefore, to be viewed as subsidies on the meat sold under price control; (2) that Section 6(a)(4) of the Price Control Extension Act of 1946 provided that subsidy "operations shall not be carried out . . . with respect to any commodity for any period . . . during which maximum prices on such commodity are not in effect"; and (3) that payment of slaughter subsidies under the terms of Regulations Nos. 10 and 3 on slaughter performed on and prior to October 14, 1946, was unlawful, because contrary to Section 6(a)(4), to the extent that slaughterers had on hand at the termination of price control some part of the meat derived from such slaughter which they were free to sell at uncontrolled prices thereafter.

Subsidy payments were authorized by Section 2(e) of the Emergency Price Control Act when it was determined "that the maximum necessary production of any commodity is not being obtained or may not be obtained" and under terms and conditions deemed "necessary to obtain the maximum necessary production." The livestock slaughter subsidies provided by Regulations Nos. 10 and 3 encouraged the production of livestock and meat and at the same time served to compensate slaughterers for the low level of max-

imum selling prices maintained on meat and meat products under the Price Control Act. The ultimate beneficiary of the subsidy was necessarily the livestock producer. Such subsidies were inaugurated in June, 1943, in connection with a general reduction, or "roll-back", in prescribed maximum prices for all meat products as part of the President's hold-the-line policy. (R. 63-64) But the payments, being stated in amounts per cwt. of live animals slaughtered, *were never related to the individual prices on particular meat products.* The pricing standard employed by the Price Administrator on meat products was over-all earnings by the meat packing industry from all operations*and such over-all earnings were likewise the standard employed in considering the compensatory aspect of the subsidies in relation to slaughterers. (Sec. 9, Directive No. 41 of Office of Economic Stabilization, 10 F. R. 4494)

Petitioner showed that during the period from September 1, 1946, when price control was reimposed, until it was terminated on October 14, 1946, it suffered heavy losses from its over-all operations in the slaughter of livestock and the sale of all products derived therefrom, that conditions were generally adverse for the industry as a whole, and that other representative slaughterers engaged in the general meat packing business suffered heavy losses. (R. 12-14)

All of complainant's sales of meat during the period September 1 through October 14, 1946, were subject to the maximum selling prices maintained by the Office of Price Administration. This was true whether the meat was obtained from slaughter conducted during this period or prior thereto. At the beginning of this period complainant had in inventory approximately 3,000,000 pounds of meat which when sold thereafter was subject to the prescribed maximum prices. During the six-week period complainant sold 5,144,855 pounds of meat and meat by-products. At the end of business on October 14, after sales from inventory and

* See *United States v. Felin & Co.*, No. 17, decided by this Court on June 14, 1948.

from slaughter conducted during the six-week period, its meat inventory had been reduced to 417,300 pounds. Thus, any limitation of the subsidy payments to only that meat sold during the period which had been derived from slaughter during the period denies to complainant any compensation for over 2,500,000 pounds of meat sold during the period at the low maximum prices. (R. 11, 14)

Petitioner also showed that in reliance upon the terms of Regulations Nos. 10 and 3 it sold practically all of the meat and meat products in its inventory at the termination of price control within the first five days thereafter at prices no higher than the maximum prices maintained by the Price Administrator. (R. 14-15)

The slaughter payments, while originally established in connection with a "roll-back" of wholesale and retail meat prices, were later altered and integrated into the subsequently inaugurated stabilization and price-control programs relating to livestock.* On October 26, 1943, the Director of Economic Stabilization announced a stabilization program establishing a maximum and minimum range of prices at which slaughterers must buy livestock, the directive providing:

"(a) That the livestock slaughter payments made with respect to cattle under Regulation 3 of Defense Supplies Corporation inure to the benefit of cattle producers; (b) That such payments are made only to the extent necessary to maintain live cattle prices within a range consistent with the purposes of the stabilization and production programs; (c) That such prices do not impose undue hardships upon any group of slaughterers whose output is needed to obtain the maximum necessary production; and (d) That the available supplies of live cattle are equitably distributed among slaughterers and feeders."

* This is demonstrated in the decision of District Judge Sullivan in *Swift & Co. v. Reconstruction Finance Corporation*, decided May 21, 1948, attached hereto as Appendix B.

The subsidy payments on cattle slaughter were also revised in connection with the establishment of "overriding" ceiling prices for live cattle in response to Directive No. 28 of the Office of Economic Stabilization issued January 10, 1945. (10 F. R. 522) Payments were again changed in response to Directive No. 41 of the Office of Economic Stabilization which was "designed to implement the stabilization and production program with respect to cattle." (10 F. R. 4494, April 23, 1945)

Each slaughterer applying for livestock slaughter subsidies under Regulations Nos. 10 or 3 was required to certify (R. F. C. Form No. DS-T-54):

"All benefits from this claim are being passed on to the persons from whom the livestock were purchased."

SPECIFICATIONS OF ERRORS TO BE URGED.

The court below erred:

1. In holding Regulations Nos. 10 and 3 of Reconstruction Finance Corporation, and the terms and conditions thereof, unlawful and beyond the discretion and authority of the Federal Loan Administrator.

2. In failing to hold that the "recapture" of payments due under the terms and conditions of said Regulations Nos. 10 and 3, as published, was an invalid attempt to revoke and repudiate obligations lawfully assumed; that a vested right to payment arose in petitioner upon its compliance with the terms and conditions of the published regulations; and that petitioner relied upon such published regulations.

3. In entering judgment dismissing petitioner's complaint.

REASONS FOR GRANTING THE WRIT.

1. This case involves the validity of an important Federal regulation issued under direction of the Federal Loan Administrator with the approval of the President. Hundreds of livestock slaughterers located throughout the United States are affected. The questions here presented, unless settled by this Court, will almost certainly result in litigation in many Federal circuits. Many suits may be brought by slaughterers claiming payments due under Regulations Nos. 10 and 3; and many suits will unquestionably have to be brought against slaughterers by the Government seeking to "recapture" subsidy payments deemed to have been unlawfully paid. This burden of litigation upon the Government, upon the courts, and upon private individuals will be avoided if the important questions here presented are promptly settled by this Court.

2. A direct conflict of decisions already exists. In suits brought by Swift & Co., Armour & Co., and the Cudahy Packing Co. against Reconstruction Finance Corporation in the District Court of the United States for the Northern District of Illinois, Eastern Division, Judge Philip L. Sullivan in an extensive opinion has considered the questions here presented and has reached a conclusion directly opposite to that reached by the Emergency Court. *Swift & Co. v. Reconstruction Finance Corporation*, No. 47C973, decided May 21, 1948, as yet unreported. His opinion is attached hereto as Appendix B. Judge Sullivan found that a right to the subsidy payment vested in the slaughterer at the time of slaughter, that the subsidy was a production payment for the ultimate benefit of livestock producers, and that plaintiff was entitled to payment from Reconstruction Finance Corporation in accordance with the terms of Regulations Nos. 10 and 3. With this direct conflict existing in the first two decided cases it is inevitable that other conflicts will arise as other litigation occurs.

3. The decision of the Emergency Court is, we believe, clearly erroneous. Congress granted to the Federal Loan Administrator an unusually broad discretion to provide, with the approval of the President, production subsidies "in such amounts and in such manner and upon such terms and conditions as he determines to be necessary to obtain maximum necessary production."* The court below reached its decision only by denying to the Federal Loan Administrator and the President the broad administrative discretion granted to them by Congress in the clearest and most emphatic terms. This result was accomplished in the decision of the court below by a disregard of the basic character of the subsidy as a "production" subsidy and a failure to give any consideration to the broad discretion lodged in the Federal Loan Administrator and the President by the statutory grant of authority. The court below rested its decision on its own views that the subsidy provided was not a production subsidy upon the slaughter of livestock as stated in the clear terms of Regulations Nos. 10 and 3 as published. The view of the Emergency Court was that the terms of the regulations are to be disregarded, that while in form the payments were upon the slaughter of livestock they were in reality not upon slaughter, or the production of meat, but were compensation to slaughterers for the sale of meat under price control.

This reasoning did not compel an invalidation of Regulations Nos. 10 and 3. Invalidation was accomplished on basis of a conclusion that the compensation could not extend to all meat sold under price control during the period September 1 through October 14, 1946, but could extend to only part of the meat sold during this period, namely, that part which was derived from slaughter performed during this period.**

* Sec. 2(e), Emergency Price Control Act of 1942, c. 26, Title I, Sec. 2, 56 Stat. 24, 50 U. S. C. App. 902(e).

**Petitioner recognized in the court below that the slaughter subsidies, in addition to encouraging the production of liv-

It was plainly within the broad discretion of the Federal Loan Administrator in determining the terms and conditions of a *production* subsidy to aim, as one of his purposes, at a generally fair and equitable level of earnings for the slaughtering and meat packing industry from all operations. This was a natural and necessary part of a program for obtaining effective maximum production of livestock and meat. His judgment as to the amounts to be paid, and the terms and conditions necessary to accomplish this purpose, published in Regulations Nos. 10 and 3, are not to be overturned by the Emergency Court on basis of allocations of livestock slaughter to sales of meat made prior to 12:01 a. m., October 14, 1946, and subsequent thereto. Such an allocation completely ignores industry earnings and the lawful purpose of the Federal Loan Administrator to provide the industry with a generally fair and equitable level of earnings from *all sales* made under

stock and meat, served to compensate slaughterers for the low level of maximum prices at which they were compelled to sell meat products. Petitioner insisted, however, that in considering the subsidies as compensation for the meat sold under price control there was no warrant for imposing upon the discretion of the Federal Loan Administrator a limitation that such compensation should extend to only part of the meat so sold. The court in its opinion quotes from petitioner's brief its acknowledgement that the subsidies served as compensation for the low prices maintained on meat products sold under price control. (R. 66) The quotation is not complete. The purpose of the language quoted was to emphasize the statement in the following sentence which was not quoted by the court, reading as follows:

"The deduction from complainant's subsidiary claims made by Respondent deprives complainant of any compensation for over 2,500,000 pounds of meat which it sold during the period of price control from inventory on hand at the beginning of the period and which it had obtained from slaughter conducted without benefit of price controls or subsidy payments."

price control. The court below refused to give any consideration to the heavy losses from all operations under price control during the period September 1 through October 14, 1946, suffered by petitioner and other members of the industry.

The Emergency Court based its invalidation of Regulations Nos. 10 and 3 primarily upon Section 6(a)(4) of the Price Control Extension Act of 1946 * which provides merely that subsidy "operations shall not be carried out . . . with respect to any commodity for any period . . . during which maximum prices on such commodity are not in effect. . . ." This obviously provided no limitation upon the broad discretion of the Federal Loan Administrator as to the amounts, or terms and conditions, of production subsidy payments operative during the period September 1 through October 14, 1946, while maximum prices were in effect on both livestock and meat. By the terms and conditions of Regulations Nos. 10 and 3 payments were limited to slaughter performed within that period. Section 6(a)(4) can not properly be construed, in contradiction of its terms, as prohibiting subsidy operations during any part of the period when maximum prices were in effect. This is the effect of the reasoning by the court below.

4. The announcement by Reconstruction Finance Corporation on March 31, 1947, that it would recapture subsidies paid or payable under the terms of Regulations Nos. 10 and 3 was manifestly an attempt to revoke or repudiate retroactively obligations lawfully assumed upon which petitioner relied, and the Emergency Court erred in failing to so hold. Regulation No. 3 providing the terms of payment, adopted and incorporated into Regulation No. 10, was published in the Federal Register. This Court as recently as November 10, 1947, has held regulations so published to have the force of law and to be binding upon all persons and upon the agency issuing such regulations "as

* C. 671, Sec. 6, 60 Stat. 671; 15 U. S. C. 713 note.

if they had been enacted by Congress directly." *Federal Crop Ins. Corp. v. Merrill*, 92 L. Ed. Adv. Ops. 51, 54. Such regulations may not be retroactively revoked upon basis of a mere announcement.

The opinion below is also contrary to the decisions of this Court in *United States v. Bethlehem Steel Corp.*, 315 U. S. 289 (1942) and *Lynch v. United States*, 292 U. S. 571 (1934). In the *Bethlehem* case the Government sought to cancel contract obligations entered into by the United States Shipping Board Emergency Fleet Corporation. On further consideration the Government felt that the contract in question was unconscionable, had been unfairly burdensome to it, and had resulted in profiteering by the Bethlehem Steel Corporation. This Court held that these grounds did not constitute a valid basis for disregarding the obligations of the Government under the contract. In the *Lynch* case Congress by statute sought to abrogate all outstanding war risk term insurance contracts which had been entered into under statutory authority by the Administrator of Veterans' Affairs. This Court held that these insurance contracts, entered into under the authorizing statute and regulations of the Administrator promulgated thereunder, were property and created vested rights which were protected by the Fifth Amendment. Mr. Justice Brandeis, speaking for the Court, said (p. 579):

"The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States. Rights arising out of a contract with it are protected by the Fifth Amendment. (Citing cases.) When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals. That the contracts of war risk insurance were valid when made is not questioned. As Congress had the power to authorize the Bureau of War Risk Insurance to issue them, the due process clause pro-

hibits the United States from annulling them, unless, indeed, the action taken falls within the federal police power or some other paramount power."

When petitioner slaughtered livestock and complied with the terms and conditions of Regulations Nos. 10 and 3 a binding contract obligation arose on the part of Reconstruction Finance Corporation to make payment in accordance with the offer and promise provided in the published regulations. In an early case, involving a bounty on salt provided under statute by the State of Michigan, this Court recognized that where the terms of the state's offer prior to repeal had been complied with, a contract obligation arose. *Salt Co. v. East Saginaw*, 80 U. S. 373 (1872). The question in the case was whether the bounty law could be repealed but this Court observed that the statute was in the nature of a contract "to bestow the promised bounty upon those who earn it so long as the law remains unrepealed." The Court held the statute did not belong to that class of laws denominated a contract "except so far as they have been actually executed and complied with." See also *Calder v. Henderson*, 54 Fed. 802, 804-805 (C. C. A. 5th 1893), which involved sugar subsidies under the Tariff Act of 1890.*

* In the *Calder* case the Circuit Court said:

"... In our opinion the 'bounty', so called in the statute, is not a pure gratuity or donation by the government, but was intended to be, and is in fact, a standing offer of reward and compensation to sugar producers, to encourage and stimulate them in the otherwise losing business of producing sugar in the United States. It was intended to be, and is in fact, a guaranty of reimbursement to sugar producers accepting the terms of the statute, of part, at least, of the cost of production. When a producer of sugar accepts the offer, and complies with the statute, it would seem to be as much a contract as it is possible for any citizen to make with the government."

Regulations Nos. 10 and 3 having been validly issued, and having been complied with by petitioner, Reconstruction Finance Corporation may not lawfully deprive petitioner of its vested contract right to payment in accordance with the terms and conditions of such regulations.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

✓ WILBUR LA ROE, JR.,
✓ FREDERICK E. BROWN,
/ ARTHUR L. WINN, JR.,
/ SAMUEL H. MOERMAN,
Investment Building,
Washington 5, D. C.
Attorneys for Petitioner.

August 27, 1948.

APPENDIX A.

LIVESTOCK SLAUGHTER PAYMENTS

REGULATION No. 10

RECONSTRUCTION FINANCE CORPORATION

WASHINGTON, D. C.

SECTION 7010.1. Reconstruction Finance Corporation shall make payments to eligible slaughterers on cattle, calves, hogs and pigs slaughtered on and after September 1, 1946, in accordance with all the terms and conditions of Livestock Slaughter Payments, Revised Regulation No. 3 of Reconstruction Finance Corporation, as amended by Amendments No. 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

SECTION 7010.2. Revised Regulation No. 3 of Reconstruction Finance Corporation and Amendments No. 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 thereto are made a part of this regulation.

SECTION 7010.3. This regulation shall terminate automatically, without regard to the ten day notice provision of Section 7003.12 of Revised Regulation No. 3, on the failure of any condition required by law as a prerequisite to validity of a subsidy on livestock or meat.

This regulation shall become effective September 1, 1946.
Issued this 28th day of August, 1946.

STUART K. BARNES,
Executive Director,
Office of Defense Supplies.

APPENDIX B.**IN THE DISTRICT COURT OF THE UNITED STATES****NORTHERN DISTRICT OF ILLINOIS****EASTERN DIVISION****No. 47C973****SWIFT & COMPANY, a corporation, *Plaintiff,******vs.*****RECONSTRUCTION FINANCE CORPORATION, a corporation,
*Defendant.*****PHILIP L. SULLIVAN, District Judge:**

This is a civil action brought by Swift & Company against the Reconstruction Finance Corporation pursuant to Section 2(m) of the Emergency Price Control Act of 1942, as amended and extended, (58 Stat. 632, 636; 50 USCA App. Section 902(m)), seeking a declaratory judgment directing Reconstruction Finance Corporation (hereinafter called RFC) to pay to Swift & Company the sum of \$221,861.51 which it alleges is a balance due and payable on its claim for livestock slaughter subsidies, in accordance with the authority granted by Section 2(e) of the Emergency Price Control Act.

The complaint alleges that RFC authorized the payment of subsidies to slaughterers, of which Swift & Company is one, and by Regulation No. 10 established the terms and conditions for such payments. That Regulation No. 10 was effective for the period from September 1, 1946, through October 14, 1946; that on October 15, 1946, the Office of Price Administration lifted price ceilings of livestock, meat and other livestock products effective as of October 15, 1946. That on October 1, 1946, and October 4, 1946, respectively, in conformity with Regulation No. 10 Swift filed its claim for livestock slaughter payments in the amount of \$929,679.97 for the accounting period beginning September 1, 1946, and ending September 28, 1946, and that on October 17, 1946, and October 21, 1946, it filed its

claim for livestock slaughter payments in the amount of \$596,765.05 for the accounting period beginning September 29, 1946, and ending October 14, 1946. That Swift has received from RFC the sum of \$1,304,583.51 in partial payment of said claims, and that there remains due and payable to Swift & Company from RFC an unpaid balance of \$221,861.51 upon said claims, which RFC has refused to pay. That on March 31, 1947, RFC issued its Announcement No. 1, which plaintiff alleges is not a lawfully issued regulation or order authorized by the Emergency Price Control Act and was not published in the Federal Register. Announcement No. 1 was followed by a letter dated April 29, 1947, which announcement and letter RFC has attempted to enforce, and pursuant to which RFC has refused to pay to plaintiff the livestock slaughter payments due to it. Announcement No. 1 advised all slaughterers, including Swift, that subsidies allocable to meat and meat products which they had in their inventories at the close of business on October 14, 1946, would not be paid, and that if such subsidies had already been paid on such inventories they would be recaptured by RFC, in order to avoid unjust enrichment of packers at the expense of the Government. That in accordance with this Announcement RFC notified Swift by letter dated April 29, 1947, that Swift was required to complete RFC's enclosed form designated as form DSC-118, intended to provide for recapture of meat subsidies paid on meat and meat products in inventory at close of business on October 14, 1946. Said letter advised Swift that on completion of form DSC-118, the amount due to RFC for recapture would appear as Schedule 6 of the form, and that the sum of money so indicated was to be paid to RFC by Swift with the filing of the form. The letter further stated that in cases "not settled pursuant to the procedures provided herein, they will be referred to the Department of Justice."

Plaintiff complains that this conduct on the part of RFC is in violation of the provisions of Section 2(m) of the Emergency Price Control Act, as well as in violation of plaintiff's rights under the Fifth Amendment to the Constitution of the United States. In its prayer for relief Swift demands that this court enter a declaratory judgment declaring Announcement No. 1 to be invalid and of no force and effect; that this court issue a temporary restraining order enjoining defendant from enforcing and carrying out

the provisions of Announcement No. 1; and that it direct RFC to pay to Swift the balance of \$221,861.51, which it claims is still due and owing to it.

In its answer Reconstruction Finance admits that Swift has filed claims for subsidies under Regulation No. 10 for the accounting periods of September and October, 1946, in the amounts and at the times alleged in the complaint; admits that Reconstruction Finance has paid on these claims the sum of \$1,304,583.51, but denies the validity of Swift's subsidy claims for the accounting periods of September and October, 1946. In addition, the Reconstruction Finance in its answer states that this court does not have jurisdiction to entertain this action. This lack of jurisdiction is based upon three factors: (1) That meat and meat products are not "agricultural commodities" within the meaning of Section 2(m); (2) That Swift is attacking the validity of a lawfully issued regulation of Reconstruction Finance, and by the provisions of Section 204(d) of the Emergency Price Control Act of 1942, as amended, its validity can be determined in the first instance only by the United States Emergency Court of Appeals; and (3) That Swift has not exhausted the administrative procedures and remedies provided for by the Emergency Price Control Act. Reconstruction Finance also sets up two counterclaims in the total amount of \$26,528.42 against Swift alleged to have arisen out of meat subsidies and butter subsidies paid to Swift, for accounting periods other than September and October 1946, but which it was not entitled to receive and retain.

It is also agreed that complaints have been filed by Armour and Cudahy which contain allegations basically similar to those in the Swift complaint, and to which Reconstruction Finance has pleaded the same defenses as in the Swift complaint.

There appear to be two fundamental issues involved in this action, apart from any consideration of the counterclaims. One issue relates to the merits of the subsidy claims presented by plaintiff, and the other relates to the jurisdiction of this court. Determination of the jurisdictional question requires consideration of the same facts, statutes and administrative action as does consideration of the merits of plaintiff's subsidy claims. Only law questions are presented by the pleadings, there being no dispute as to any essential issue of fact.

Plaintiff relies upon Section 2(m) of the Emergency Price Control Act of 1942, as amended and extended, (50 USCA 902(m)) to give this court jurisdiction of the action set up in its complaint. That Section which was added to the Emergency Price Control Act in June, 1944, provides:

"No agency, department, officer, or employee of the Government, *in the payment of sums* authorized by this or other Acts of Congress *relating to the production or sale of agricultural commodities*, or in contracts for the purchase of ANY SUCH COMMODITIES by the Government or any department or agency thereof, or in any allocation of materials or facilities, or in fixing quotas for the production or sale of any such commodities, shall impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder, under which such sums are authorized, such contracts are made, materials and facilities allocated, or quotas for the production or sale of any such commodities are imposed. Any person aggrieved by any action or any agency, department, officer, or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department, officer, or employee may petition the district court of the district in which he resides or has his place of business for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to grant appropriate relief. The provisions of the Judicial Code as to monetary amount involved necessary to give jurisdiction to a district court shall not be applicable in any such case."

Swift urges that it has a right to recover unpaid livestock slaughter subsidies (and to retain the subsidy payments previously made to it by RFC) with respect to carcasses and processed meats on hand in its inventories upon termination of price control on October 15, 1946, resulting from animals slaughtered in reliance upon the livestock slaughter subsidy program in effect under the Emergency Price Control Act, and appropriate regulations, during the period of September 1, 1946, to October 15, 1946.

On the other hand RFC contends that it was a fundamental conception of the subsidy program from its inception that meat subsidies would be paid only upon such meat and meat products as were sold by the slaughterers at controlled prices, and that all slaughterers knew of this condition and had notice thereof. That Announcement No. 1 and the implementing letter merely restated the condition and announced the procedure to be followed by the slaughterers in computing their terminal inventories and the procedure by RFC in recovering such sums as might have been erroneously paid on such inventories. That the Announcement was not intended to and did not in fact change any existing substantive rights or liabilities.

The subsidy program rested basically on the authority of Section 2(e) of the Emergency Price Control Act of 1942, as amended. (50 USCA 902(e)). The Stabilization Act of 1942 (50 USCA App. 961 et seq.) complemented the Emergency Price Control Act and vested the President of the United States with various powers in respect of prices and wages. Pursuant to both Acts, the President promulgated Executive Order No. 9250 (7 Fed. Reg. 7871) which established the Office of Economic Stabilization, and authorized that office to direct the Reconstruction Finance Corporation and subsidiaries organized pursuant to Section 5(d) of the Reconstruction Finance Corporation Act, as amended, to use their authority to subsidize any commodity if such measure, among others provided for in the order, was deemed necessary to insure maximum necessary production and distribution of the commodity in question, or to maintain selling prices, or to prevent price rises inconsistent with the purposes of the Executive Order.

Defense Supplies Corporation, a subsidiary of RFC, was designated as the paying or disbursing agency in respect of livestock slaughter subsidies. The necessary appropriations appear to have been made by Congress from time to time, as provided and authorized by Section 2(e) of the Price Control Act. Through its subsidiary, Defense Supplies Corporation, RFC participated in the livestock subsidy program from its inception, subject to the operating directives and control of the Office of Economic Stabilization. By order and directive of the Office of Economic Stabilization effective January 28, 1946, (11 Fed. Reg. 1215), RFC replaced its subsidiary Defense Supplies Corporation, as the paying and disbursing agent, and continued

thereafter to serve as such agent, the statutory powers of Defense Supplies Corporation having been terminated by an Act of Congress.

Under the Emergency Price Control Act the Director of Economic Stabilization was authorized to issue operating directives, and accordingly in such an operating directive he laid down the basic standards with which RFC was to comply in making livestock slaughter subsidy payments. On October 26, 1943, the Director of Economic Stabilization announced a stabilization program establishing a maximum and minimum range of prices at which producers must sell and slaughterers must buy livestock, the directive providing:

“(a) That the livestock slaughter payments made with respect to cattle under Regulation 3 of Defense Supplies Corporation inure to the benefit of cattle producers; (b) That such payments are made only to the extent necessary to maintain live cattle price within a range consistent with the purposes of the stabilization and production programs; (c) That such prices do not impose undue hardships upon any group of slaughterers whose output is needed to obtain the maximum necessary production; and (d) That the available supplies of live cattle are equitably distributed among slaughterers and feeders.”

The operating directive then proceeds to set forth the prices at which producers were required to sell and slaughterers were required to purchase live cattle, and further provided that if a slaughterer paid either above or below this range of prices his subsidy would be adjusted accordingly, and then concludes with this statement:

“9. This directive shall become effective immediately except that paragraph 3 and 4 shall become effective on December 1, 1943, and payments under paragraph 5 shall be made with respect to cattle slaughtered on and after November 1, 1943.”

The statement of considerations issued simultaneously with the Directive (Office of War Information Release 2652) stated that among the objectives of the directive was:

"2. To maintain prices of live cattle within a stated range approximating the present price levels, thus affording a support price to livestock producers and at the same time discouraging unwarranted advances in the live markets."

The statement then continued:

"Since May, 1942, beef prices have been subject to control at wholesale and retail. On December 16, 1942, uniform dollars and cents prices were established by zones throughout the country for beef carcasses and wholesale cuts. Based upon these regionally uniform wholesale prices, uniform dollars and cents retail prices were established in May, 1943. As part of the Government's program for reducing the cost of living to the general level of September 15, 1942, the wholesale and retail prices of beef were reduced by approximately 10 per cent in June of 1943. In order that this reduction might not threaten production of livestock by unduly reducing the return to the producer, the price reduction was accompanied by the institution of an equalized payment to slaughterers, enabling them to continue to pay the same prices for live cattle."

And further:

"The directive has a second major purpose: To stabilize the prices of live cattle within a range corresponding approximately to current levels.

"A substantial increase in present live cattle prices would nullify the relief which the directive affords to non-processing slaughterers. It would also threaten the position of the industry as a whole. A decline in live cattle prices, on the other hand would defeat the purpose of the general subsidy program by discouraging production, and would be detrimental to the interests of livestock producers.

"The Director has considered the possibility of establishing both price ceilings and support prices for live cattle. The present directive, while avoiding the disadvantages of a formal price regulation or support price program, seeks to accomplish the purposes of both. This it does by requiring deductions from subsidy payments in the case of any slaughterer whose

monthly payments for live cattle are either above or below the range of prices provided for in the directive."

It appears that the Directive of October, 1943, initiating the livestock stabilization program, speaks only of payment of subsidy on slaughter of livestock, which payment was intended to inure to the benefit of the producer. The slaughterer was merely the medium through which the benefit of the subsidy eventually reached the producer, the entire program being designed in order not to depress the selling prices of the producer, and so as to maintain his production incentive. The subsidy was to be paid not to the consumer, not to the retailer, not to the wholesaler, not on meat inventories of the slaughterers, but was to be paid to the slaughterer for the killing of the live animal, and from which payment the producer had already secured the benefit at the time the slaughterer purchased the livestock from him. The directive provided that the slaughterer was to be reimbursed when he slaughtered the livestock for which he had passed on to the producer the subsidy benefits, as required by Section 7003.10(b). What the producer received was as much a livestock subsidy as if the Government itself had made the payment directly to the producer.

Attempts to stabilize the selling price of live cattle, as outlined in the October, 1943, release of the Director of Economic Stabilization were deemed inadequate, and by Directive 28 (10 Fed. Reg. 522, issued January 10, 1945) "overriding" ceiling prices on sales of live cattle and calves were authorized. The subsidy paying agencies were ordered to establish "overriding" ceiling prices on live animals. The maximum and minimum livestock prices established, pursuant to the basic directive of October 26, 1943, were retained with the "overriding" ceiling price operating as a further restriction. The purposes of the directive were described as follows:

"This order is designed to implement the program instituted pursuant to the directive of Livestock Slaughter Payments, issued by the director, Office of Economic Stabilization, October 26, 1943. This order is designed to inure maintenance of prices of live cattle and calves within a range consistent with the purposes of stabilization and production programs and to aid

in carrying out the purposes of the directives on livestock slaughter payments of October 26, 1943."

The program as announced in Directive No. 28 revised subsidy payments respecting live cattle "slaughtered on or after January 29, 1945," and Defense Supplies Corporation was directed to amend its Regulation 3 in accordance with the order. Pursuant to Directive 28 the Office of Price Administration issued MPR 574 which established "overriding" ceiling prices on live animals; and prohibited any producer or any slaughterer from selling or buying livestock at prices in excess of the established price. Directive 41 (10 Fed. Reg. 4494, April 23, 1945,) which followed directive No. 28, and which revoked all previous directives "so far as they are inconsistent with this directive and remain in effect in all other particulars," did not condition the payment of subsidies either directly or indirectly on the requirement that the processed commodities must eventually be sold to the consumer during the existence of retail ceiling prices. The directive authorized payment of subsidies on "livestock slaughter" and was "designed to implement the stabilization and production program with respect to cattle." The directive is entitled "Livestock Slaughter Payments," and authorizes payment of subsidies on livestock slaughter, setting forth the rates and grades as follows:

"Defense Supplies Corporation is directed to pay the following rates by grade for cattle slaughtered on or after May 1, 1945."

Directive 41 recited in detail the conditions which RFC was authorized to establish upon the payment of subsidies, and nowhere therein, either by express language or by inference, can I find where RFC was authorized to impose the conditions contained in Announcement No. 1, and the implementing letter, which it now urges was always a part and parcel of the subsidy program, and should have been well known to the industry. On November 18, 1946, (subsequent to October 14, 1946, the date of the termination of price control) Directive 41 was amended for the purpose of clarifying some of the conditions of payment on "livestock slaughter." Thus, even after decontrol, Directive 41 still dealt with the livestock slaughter program for pur-

poses of clarifying conditions applicable to payment of the subsidies, but nowhere imposing any additional conditions or penalties. On March 12, 1947, previous to the issue of Announcement No. 1, and again on April 8, 1947, after issuance of Announcement No. 1, and again on May 2, 1947, after issuance of both Announcement No. 1 and the Implementing letter, Directive 41 was amended, but nowhere in these various amendments is any language used which I am able to interpret as intended to amend the original Subsidy Act so as to provide that it covers a consumer's meat subsidy and not a slaughterer's subsidy for the benefit of the producer. RFC itself apparently interpreted the original Act as providing for a slaughterer's subsidy.

The Emergency Price Control Act of 1942, as amended and extended, terminated on June 30, 1946, by virtue of the President's veto of a bill passed by Congress to extend the Act for another year, which automatically terminated the livestock slaughter subsidy program. Subsidies had been paid upon all livestock slaughtered prior to June 30, 1946, irrespective of whether inventory of processed meats resulting from such slaughtering were on hand or not at the time of the expiration of the Price Control Act.

July 25, 1946, Congress passed the Price Control Extension Act of 1946, Section 6 thereof extending the authority of Reconstruction Finance Corporation to continue the noncrop subsidy program theretofore in effect for the period ending June 30, 1947.

August 28, 1946, RFC issued its regulation No. 10 entitled "Livestock Slaughter Payments Regulation No. 10, Reconstruction Finance Corporation" re-establishing the livestock slaughter subsidy program which was in effect on June 30, 1946. This Regulation consisted of three sections, the first of which provided that "Reconstruction Finance Corporation shall make payments to eligible slaughterers on cattle, calves, hogs, and pigs slaughtered on and after September 1, 1946, in accordance with all the terms and conditions of Livestock Slaughter Payments, Revised Regulation No. 3 of Reconstruction Finance Corporation as amended * * *." The second section provided that Revised Regulation 3, and specified amendments thereto were incorporated into and made a part of Regulation 10. The third section took cognizance of the prospective termination of the regulation in contemplation of the policy of gradual decontrol provided for in the Extension Act of 1946. Ex-

press reference was made to the termination section of Revised Regulation No. 3 and that section was amended by the addition thereto of the further provision that "This regulation shall terminate automatically without regard to the ten-day notice provision of Section 7003.12 of Revised Regulation No. 3, on the failure of any condition required by law as a prerequisite to validity of a subsidy on livestock or meat."

With this exception, the termination section of Revised Regulation No. 3 was continued in force, including in particular the provision that termination of the regulation "shall not preclude the filing of claims on account of livestock slaughtered on or before the date of termination for which the applicant would otherwise have been eligible."

Effective October 15, 1946 price controls on livestock and products processed therefrom were removed by order of the Office of Price Administration. On January 3, 1947, RFC confirmed the termination of the livestock slaughter subsidy program and of Regulation No. 10 as of midnight October 14, 1946, by publication in the Federal Register of a declaration to that effect (12 Fed. Reg. 66) the notice reciting that "Part 7010—Livestock Slaughter Payments, expired October 14, 1946."

On March 31, 1947, RFC issued what it termed Announcement No. 1 advising all slaughterers that subsidies allocable to meat and meat products which they had in their inventories at the close of business on October 14, 1946, would not be paid, and that if such subsidies had been paid on such inventories then RFC would proceed to recapture such payments. Announcement No. 1 was followed on April 29, 1947 by the implementing letter.

RFC now insists that under Regulation No. 10 the subsidy here under consideration is and always has been a consumer's meat subsidy and therefore should not have been paid to the slaughterers unless the meats processed from livestock were sold to the consumer during the existence of retail ceiling prices.

With this I do not agree. I can find no such provision, either directly or by inference, in Regulation No. 10. Both Regulations 3 and 10 provided expressly that the subsidy was payable at the time of the slaughter of the livestock. The Emergency Court of Appeals so held in *Armour & Company v. Reconstruction Finance Corporation*, 162 Fed. (2) 918, saying:

"We have heretofore held that the livestock slaughter subsidy was basically a production subsidy, and as such was authorized by Section 2(e) of the Act."

I believe that the entire livestock slaughter subsidy program was expressly designed to operate for the benefit of the livestock producer. I believe that RFC itself so interpreted the original Act and the Extension Act of 1946, because it honored subsidy claims for slaughter up to June 30, 1946, and paid claims for actual slaughter occurring after September 1, 1946, and up to October 15, 1946. RFC makes no claim that at the termination of Regulation No. 10 on October 14, 1946, plaintiff had not fully complied with all subsidy and price regulations. I am of the opinion that the interpretation of Regulation No. 10 now urged by RFC is repugnant to the clear and inambiguous language used in Regulation No. 10. Nowhere in the Regulation can I find anything contrary to the express language which provides that the subsidy became due and was payable at the time the slaughtering took place. The producer had previously secured the benefit of the subsidy because it was included in the higher price which he had received for the sale of his livestock. The subsidy was made payable at the slaughtering level for administrative purposes only, the benefit thereof accruing to the producer because the controlled prices at which he could sell his livestock took the subsidy into consideration. The courts have frequently held that the meaning of a statute must in the first instance be sought in the language in which the Act is framed, and if that is plain, and if the law is within the constitutional authority of the law making body which passed it, the whole function of the courts is to enforce it according to its terms. *Caminetti v. United States*, 242 U. S. 470. I therefore hold that under the plain and inambiguous meaning of Regulation No. 10 the subsidy payments herein controversy became due at the time the slaughtering took place, and plaintiff is therefore entitled to be paid the sum of \$221,861.51, as set out in its complaint.

Defendant attacks the jurisdiction of this court on the ground that Section 204(d) of the Price Control Act withdrew from all courts, including this court, and vested in the Emergency Court of Appeals, jurisdictional power "to determine the validity of any regulation or order issued

under Section 2(m).” Section 204(d) of the Emergency Price Control Act provides:

“The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under Section 2, of any price schedule effective in accordance with the provisions of Section 206, and of any provision of any such regulation, order or price schedule. Except as provided in this section, no court, Federal, State or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of such regulation, order or price schedule, or to restrain or enjoin the enforcement of any such provision.”

Section 204(d) gives to the Emergency Court of Appeals exclusive jurisdiction to determine the validity of any regulation or order issued under Section 2(m) of the Act, and that is just what plaintiff complains of. It insists that Announcement No. 1 was not a regulation or order authorized by Section 2(m) but on the contrary amounts to a condition or penalty not authorized by the provisions of the Act, and therefore brings its cause of action squarely within the jurisdiction of this court, with which contention I agree. The Government admits that the remedy provided by Section 2(m) can be invoked in this case only by persons claiming subsidies “relating to the production or sale of agricultural commodities,” but the Government denies that subsidies here involved do so “relate to the production or sale of agricultural commodities.” Holding, as I do, that the subsidy here in question is one for the benefit of the producer, and that at all times the benefits of the subsidy were passed on by the slaughterer to the producer, it necessarily follows that it is one “relating to the production or sale of agricultural commodities.” In *Atlantic Meat Company, Inc. v. Reconstruction Finance Corporation*, 166 Fed. (2) 5, decided on February 5, 1948, by the Circuit Court of Appeals for the First Circuit, that court held that Section 2(m)

gave District Courts jurisdiction to grant relief where the plaintiff complained of "unlawful conditions or penalties imposed in the payment of sums relating to the production or sale of agricultural commodities." In that case, however, the court was confronted with the additional duty of interpreting "agricultural commodities" in contra-distinction to "commodities manufactured or processed in whole or substantial part from an agricultural commodity." This question does not arise in the instant case, because of my holding that the subsidies here involved relate to the production of agricultural commodities.

I am of the opinion that Announcement No. 1, together with its implementing letter, amounts to a penalty and is not a regulation or order authorized by Section 2(m), and that therefore this court has jurisdiction to entertain the case at bar, the remedy sought being one expressly "relating to the production or sale of agricultural commodities."

Plaintiff is entitled to a declaratory judgment finding that RFC is indebted to it in the sum of \$221,861.51, the amount claimed in the complaint.

The Reconstruction Finance Corporation in its answer sets out two counterclaims, which have not been considered by the court in this opinion.

May 21, 1948.